IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 334 (S/B) of 2003

Chaman Lal Shah S/o Late Sri D.L. Shah,
R/o Vikas Lok, Lane-4, Sahastradhara Road, Dehradun

... **Petitioner**

Vs

Union of India through Secretary,
Ministry of Science & Technology, (Deptt. Of Science & Technology) Technology Bhawan, New Delhi and five others

... **Respondents**

Sri Narayan Dutt, Advocate, learned for the petitioner.
Sri V.B.S. Negi, Asstt. Solicitor General, learned counsel for respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the judgment dated 14.01.2003 passed by Central Administrative Tribunal, Allahabad Bench in O.A. No.42 of 2001, Chaman Lal Shah Vs. Union of India & others as well as the order dated 23.04.2003 passed in Review Application No. 7 of 2003.

2. Brief facts of the case giving rise to the present petitioner are that the petitioner started his service career in the respondents establishment as T.T.T.A. 'A' on 27.05.1972 and was promoted as Surveyor on 1.1.1975. As per 1962 Rules, 50% posts of Officer Surveyor (Group 'B') were to be filled up by promotion whereas 50% posts were to be filled through competitive examination. The 1962 Rules were superseded by Survey of India Officer Surveyors Recruitment Rules, 1983, according to which 75% of the posts were to be filled by promotion quota by selection from Surveyors. Survey Assistant, Geodetic

computers and Draftsmen Division-I and 25% posts to be filled up by promotion through Limited Departmental Competitive Examination (in short LDCE). The petitioner along with other persons appeared in the LDCE in August, 1986 followed by interview in January, 1987. On the basis of LDCE, the petitioner was promoted to the post of Officer Surveyor (Group 'B') w.e.f. 1.7.1987. In the same examination, Respondent No.3 also appeared and was selected. The seniority list of Officer Surveyor was issued on 29.1.2001, in which the name of the petitioner appeared at Sl. No.52 and of Respondent No.3 at Sl. No.56. However, the promotion order of Officer Surveyor (Group 'B') to the post of Superintending Surveyor (Group 'A') was issued on 26-7-2001, in which the name of the petitioner did not appear, though he stands senior to the respondents as Officer Surveyor. Being aggrieved, the petitioner filed a representation on 31.7.2001 and since the grievance of the petitioner was not redressed, he filed an O.A. No.42 of 2001 before Central Administrative Tribunal. The Tribunal after perusing the evidence on record vide its judgment and order dated 14.01.2003 dismissed the claim petition of the petitioner. Thereafter, the petitioner filed a review petition, which was also dismissed by the Tribunal vide its order-dated 23.04.2003. Feeling aggrieved, the petitioner has come up in this writ petition.

3. We have heard learned counsel for the parties and perused the entire evidence available on record.

4. Learned counsel for the respondents submitted that the petitioner was not superseded. He was considered and graded but his name did not find place in the select list of the selection for promotion held for the year 1992-93 according to the Rules which were

stated in the counter affidavit filed in the O.A. before the Tribunal, therefore, the petitioner's assertion that he has been superseded is wrong. The Tribunal has in very detail considered the arguments of both the parties and the case law cited by them and has rightly held that there was no supersession of the petitioner. The Rule relating to the promotion from the post of Surveyor to the Superintending Surveyor is made on the basis of selection-cum-merit and the petitioner has set up his place only on the principles of seniority subject to rejection of unfit, which is not attracted in the present case. The selection-cum-merit procedure has been prescribed by a circular which has been reproduced in para 8 of the judgment, which reads as under:-

> *"Notwithstanding the provisions mentioned above in the case of promotion made for induction to Group 'A' posts/services from lower groups, while the benchmark would continue to be 'Good' the D.P.C. shall grade the officers as 'Outstanding' Very Good' 'Good' 'Average' and 'Unfit' as the case may be and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those graded as 'Very Good' and so on in the select panel upto the number of vacancies, with the officers having the same grading maintaining their inter-se seniority in the feeder grade."*

5. The Tribunal in Para 9 of its judgment has recorded a finding which reads as under:-

> *"It is an admitted fact that review D.P.C. was held on 26.07.2001, in pursuance of the Full Bench Judgment of Cuttack Bench of this Tribunal in O.A. No. 438 of 1998 and O.A. No.221 of 1996 separately for the vacancies for the year 1992 and 1993. We find force in the submission of the respondents that since juniors have better grading than the applicant, the applicant could not find place in the select list. The Bench Mark of the Selection to the post of Superintending Surveyor is 'Good' and the applicant could not find place in the select list drawn by the review D.P.C. because there were Officers having grading of 'Outstanding' and 'Very Good' and since*

as per rules the panel had to be drawn upto the number of vacancies, there is nothing on record to show that the applicant did not get the Bench Mark grading. The law laid down by Hon'ble Supreme Court in case of U.P. Jal Nigam (Supra) followed by this Tribunal in case of Udai Krishna and also by Mumbai Bench of this Tribunal in case of Charan Singh Azad will not be any help to the applicant. The main issue raised in the above cases was that the applicants were not given Bench Mark grading which should have been considering as adverse in absence of any communication, which is not so in the present case."

6. Learned counsel for the petitioner could not convince us to take another view with regard to the findings recorded by the Tribunal. In our opinion, the Tribunal's judgment is perfectly just and proper in the facts and circumstances of the case and do not call for any interference of this Court in exercise of its powers under Article 226 of the Constitution of India.

7. The writ petition is devoid of merit and is dismissed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**
10.05.2006 **10.05.2006**

Rajeev Dang